

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Petition of USTelecom for Forbearance Pursuant)	WC Docket No. 18-141
to 47 U.S.C. § 160(c) to Accelerate Investment in)	
Broadband and Next-Generation Networks)	
)	
Regulation of Business Data Services for Rate-of-)	WC Docket No. 17-144
Return Local Exchange Carriers)	
)	
Business Data Services in an Internet Protocol)	WC Docket No. 16-143
Environment)	
)	
Special Access for Price Cap Local Exchange)	WC Docket No. 05-25
Carriers)	

REPLY COMMENTS OF CENTURYLINK

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REPLY COMMENTS OF CENTURYLINK

CenturyLink, Inc.¹ hereby files these reply comments in response to the Wireline Competition Bureau's request for additional comment in the price cap Business Data Services (BDS) and USTelecom Forbearance Petition proceedings.²

I. INTRODUCTION AND SUMMARY

The opening round of comments confirms that nationwide relief is warranted both for the ILEC-specific unbundling and resale obligations identified in USTelecom's forbearance petition and for TDM transport in the price cap BDS proceeding. As it previously has in both proceedings, INCOMPAS vastly overstates the significance of unbundled network element

¹ This submission is made by and on behalf of CenturyLink, Inc. and its wholly owned subsidiaries.

² *Wireline Competition Bureau Seeks Focused Additional Comment in Business Data Services and USTelecom Forbearance Petition Proceedings and Reopens Secure Data Enclave*, WC Docket Nos. 18-141, *et al.*, Public Notice, DA 19-281 (WCB Apr. 15, 2019) (Public Notice), 84 Fed. Reg. 17371 (Apr. 25, 2019); Public Notice, DA 19-421 (WCB May 14, 2019).

(UNE)- and resale-based competition based on anecdotal narratives. In fact, it is facilities-based competition, spurred by technological convergence of wireline, cable, and wireless networks and services, that has transformed telecommunications markets and given business and residential customers more competitive choices and innovative solutions than they could have imagined in the mid-1990s when the UNE and Section 251(c)(4) resale obligations were established. UNEs and resale play a minor and diminishing role in the competitive marketplace.³

UNEs are especially inconsequential for residential services, which now bear little relation to the single-source “plain old telephone service” available at the time of the 1996 Act. Detailed analysis of CenturyLink’s UNE billing records reveals that few, if any, DS1 or DS3 loops provided by CenturyLink are used to serve residential customers, as are only a tiny percentage of DS0 loops. For unbundled DS1 and DS3 loops, this is hardly surprising given their average prices in CenturyLink’s footprint of \$68.59 and \$719.30, respectively, making a residential CLEC business case based on these outdated services highly questionable.

CLECs opposing USTelecom’s petition also overlook the fact that the networks used to provide UNEs and the services subject to Section 251(c)(4) will continue to be available if the Commission grants the USTelecom petition. CenturyLink has long provided, and continues to provide, commercial replacement services for UNEs it is no longer required to provide. The same will be true for any UNEs the Commission eliminates in the USTelecom forbearance petition proceeding, following any transition period adopted by the Commission. CenturyLink commits to provide each UNE, including DS0 loops, on a commercial basis if the Commission forbears from the requirement to provide that UNE on a TELRIC basis pursuant to Section

³ Petition for Forbearance of USTelecom – The Broadband Association, WC Docket No. 18-141, at 15, 18 (filed May 4, 2018) (Petition).

251(c)(3), to the extent the copper facilities and other components necessary to provide the UNE remain in service.

The initial comments also confirm that elimination of ex ante pricing regulation is warranted nationwide for price cap carriers' TDM transport, whether provided as BDS or UNEs. These overdue actions are easily justified by the Commission's factual findings in the *BDS Order*, now supplemented by the Bureau's April Data Tables. INCOMPAS and Sprint urge the Commission to ignore those data tables, based on implausible and unsubstantiated suggestions that competitors with fiber near ILEC wire centers fail to include splice points necessary to serve these long-established aggregation points often located in central business districts and that cable companies with such fiber similarly ignore potential demand at those aggregation points.

Finally, the Commission should reject the CLECs' procedural objections to relying on the April Data Tables and the Commission's key findings in the *BDS Order*. The Commission was well within its authority to introduce those tables into the record. Nor is there any merit to INCOMPAS' claim about compliance with the "complete-as-filed" rule, which USTelecom has already rebutted.

For all these reasons, the Commission should adopt its proposal to eliminate ex ante pricing regulation of price cap carriers' TDM BDS transport and grant the nationwide relief from ILEC unbundling and resale obligations sought in USTelecom's petition, or, at the very least, the partial relief noted in USTelecom's May 6th ex parte submission.⁴

⁴ See Letter from Patrick R. Halley, Senior Vice President, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed May 6, 2019) (USTelecom May 6, 2019 Ex Parte).

II. COMPETITION AND BROADBAND AVAILABILITY DO NOT DEPEND ON UNBUNDLED LOOPS OR SECTION 251(c)(4) RESALE.

From reading INCOMPAS' and Sprint's opening comments, one might conclude that without UNEs and Section 251(c)(4) resale, competition in telecommunications markets would cease and large numbers of consumers would be left without broadband and other services. That is far from reality. An overwhelming majority of business and residential customers today obtain service from competitors that do not rely on UNEs or resold services, but instead provide facilities-based services that entirely bypass ILEC networks. Thus, if the Commission eliminates its outdated unbundling and ILEC resale obligations, as it should, this thriving facilities-based competition will only continue to grow. Residential customers will continue to shed their wireline telephone service in favor of mobile wireless. Cable companies will continue to rule consumer broadband markets and maintain their rapid growth in business markets.⁵ And, finally, CLECs will continue to supplement their own facilities and services with those obtained on a wholesale basis from ILECs and other carriers. Notably, Windstream, one of the largest CLECs, has withdrawn its opposition to the Petition, subject to the agreed-upon transition period for UNEs.⁶

This outlook demonstrates just how much the telecommunications marketplace has changed since the mid-1990s, when the ILEC-specific unbundling and resale obligations at issue in the USTelecom forbearance petition proceeding were enacted. Back then, except for long distance, consumers typically had only one choice for telephone and incipient Internet access

⁵ Comments of AT&T, WC Docket Nos. 18-141, 17-144, 16-143, 05-25, at 4 (filed May 9, 2019) (AT&T Comments) (noting that cable has won more than 60 percent of wireline broadband customers); Comments of CenturyLink, WC Docket Nos. 18-141, 17-144, 16-143, 05-25, at 6-7 (filed May 9, 2019) (CenturyLink Comments).

⁶ See Comments of Verizon, WC Docket No. 18-141, at 1 (filed May 9, 2019) (Verizon Comments).

services—the local ILEC. ILECs similarly dominated local business services. The Telecommunications Act of 1996 was meant to change that. Section 251(c)(3) required ILECs to offer their competitors unbundled access to ILEC last-mile facilities at regulated rates, and Section 251(c)(4) obligated ILECs to allow competitors to resell ILEC telecommunications services at a wholesale discount.⁷ The drafters of the 1996 Act hoped that these interim regulatory measures would enable new entrants gradually to gain a foothold in local markets, allowing them to deploy their own facilities, ultimately replacing this “synthetic” competition with vibrant facilities-based competition.⁸

The drafters accurately predicted the end result (*i.e.*, pervasive facilities-based competition), but not so much the means that would achieve that result. Competition reliant on ILEC-specific unbundled and resold service play a surprisingly small part in the deep and widespread competition that characterizes today’s telecommunications markets. As the Commission has recognized in other contexts, the real drivers of this competition have been cable operators’ dramatic success in winning ILEC residential, and, more recently, business customers;⁹ the steady shift from ILEC-provided TDM services to IP services provided primarily by CLECs;¹⁰ and the exodus of voice customers from ILEC networks, particularly to wireless

⁷ See 47 U.S.C. §§ 251(c)(3), (c)(4).

⁸ See *USTA v. FCC*, 290 F.3d 415, 424 (D.C. Cir.), *reh’g & reh’g en banc denied* (D.C. Cir. Sep. 4, 2002) (*per curiam*), *cert. denied*, *WorldCom, Inc., et al. v. USTA, et al.*, 538 U.S. 940 (2003).

⁹ *Business Data Services in an Internet Protocol Environment*, WC Docket Nos. 16-143 *et al.*, Report and Order, 32 FCC Rcd 3459, 3485 ¶ 55 (2017) (*BDS Order*) (“The entry of cable into business data services provisioning has been the most dramatic change in the market over the past decade[.]”), *remanded in part sub nom., Citizens Telecomms. Co. of Minn., LLC v. FCC*, 901 F.3d 991 (2018), *mandate stayed until* Nov. 12, 2019 (Order, 8th Cir. Nov. 9, 2018) (Nos. 17-2296 *et al.*) (*Stay Order*).

¹⁰ *Id.* at 3470-72 ¶¶ 22-26.

and VoIP alternatives.¹¹ Tellingly, none of these phenomena rely on ILEC last-mile facilities or services.

Thus, neither unbundling nor ILEC-specific resale is necessary to perpetuate broadband availability or competition. CLECs seeking to retain these requirements tell a very different, and misleading, tale. Based on a series of anecdotes,¹² they imply that the Commission's unbundling and resale policies are instrumental in maintaining service to large numbers of business and residential customers that purportedly have been underserved or ignored by ILECs. This narrative is wrong on at least three counts.

First, with regard to business services, UNE- and resale-based competition is but a footnote in highly competitive BDS markets. In 2017, based on a voluminous record, the Commission concluded that business data services are sufficiently competitive to justify eliminating ex ante pricing regulation of price cap carriers' TDM transport services on a nationwide basis, and of their TDM end user channel termination services in counties containing

¹¹ See *Technology Transitions; USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, Declaratory Ruling, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 8283, 8293 ¶¶ 28-29 (2016) (*USTelecom Technology Transition Order*) (noting that ILECs' switched access telephone lines are far from a monopoly platform for the delivery of voice services).

¹² See, e.g., Comments of INCOMPAS, WC Docket Nos. 18-141, 17-144, 16-143, 05-25, Attachments 1-9 (filed May 9, 2019) (INCOMPAS Comments).

most demand for those services.¹³ The Commission reached these conclusions without giving any weight to UNE- and resale-based competition.¹⁴

That growth has occurred, in part, from the ongoing migration from ILEC-provided TDM services, such as DS1s and DS3s, to Ethernet and other packet-based services, which are provided predominantly by cable and other non-ILEC competitors. Thus, INCOMPAS' claim that ILECs "heavily dominate" the TDM product market has no meaning.¹⁵ TDM-based BDS, as well as UNE DS1s and DS3s, share the same product market with Ethernet, Wave, and other packet-based services and are an increasingly small factor in that market.¹⁶ This trend will only continue, as ILEC legacy BDS steadily decline.¹⁷ Indeed, CenturyLink provides only 17 UNE DS3 loops today. How the Commission could deem it "necessary" in a forbearance analysis to retain any service with such small demand defies explanation.¹⁸ INCOMPAS' focus on a relatively small number of potential outliers cannot change the fact that UNEs and Section 251(c)(4) resale are not a significant factor in the highly competitive BDS market, and their elimination would not have a material impact on end users in that market.

¹³ See generally, *BDS Order*, 32 FCC Rcd 3459 (2017). As noted by Verizon, any price increases that have occurred since the *BDS Order* do not reflect a lack of price-constraining competition. Verizon Comments at 8-9. The Commission readily acknowledged in the *BDS Order* that declining utilization and rising per-unit costs had left many DS1 and DS3 rates below cost. *Id.* at 9, citing *BDS Order* ¶ 229 (32 FCC Rcd at 3554-55).

¹⁴ *BDS Order*, 32 FCC Rcd at 3520 ¶ 132 n.401.

¹⁵ INCOMPAS Comments at 6-7.

¹⁶ *BDS Order*, 32 FCC Rcd at 3472 ¶ 26.

¹⁷ Atlantic-ACM, *U.S. Telecom Wireline and Wireless Sizing and Share Forecast: 2018-2023* at 59 (Oct. 2018) (*Atlantic-ACM Wireline and Wireless Forecast*), as attached to letter from Craig J. Brown, CenturyLink, to Marlene H. Dortch, FCC, WC Docket Nos. 17-144, 16-143, 05-25 (Mar. 1, 2019).

¹⁸ See 47 U.S.C. § 160(a)(1).

Second, UNEs and resale are similarly inconsequential for residential services.

According to the Commission's most recent Form 477 data, ILECs face competition from cable companies offering broadband services with download speeds of at least 25 Mbps in census blocks with 90 percent of U.S. households and population.¹⁹ Those census blocks are largely non-rural and sufficiently populated to support competition among multiple providers. At the same time, ILEC voice services have declined substantially, being displaced by wireless and VoIP connections, leading the Commission to forbear from dominant carrier regulation of ILECs' switched access lines in 2016.²⁰ UNE- and resale-based competition was not a factor in the Commission's competitive analysis that resulted in that deregulation.

Indeed, only a small percentage of UNEs are purchased to serve residential end users, as reflected in CenturyLink's analysis of the service addresses to which it provides unbundled DS1, DS3, and DS0 loops. CenturyLink compared those addresses to the business locations identified in Dun & Bradstreet and Equifax databases. That analysis resulted in an exact match for 96.4% of the DS1 loop service addresses, and another 2.3% of those addresses are within 1/20th of a mile (264 feet) of a business address in one or both of those databases. And all but 25 of the DS1 loop service addresses (less than 0.1% of the total) are within half a mile of a service address listed in a database. Thus, this analysis provides very strong evidence that at least 98.7% of CenturyLink's unbundled DS1 loops terminate at business addresses, and solid evidence that most of the remainder do as well.²¹ For DS3 loops, all service addresses in CenturyLink's billing

¹⁹ USTelecom May 6, 2019 Ex Parte at 2.

²⁰ *USTelecom Technology Transition Order*, 31 FCC Rcd at 8289 ¶ 16.

²¹ Given inevitable errors in billing records, it is very likely this analysis understates the percentage of CenturyLink's UNE DS1 loops that are provided to business locations, since an error even in a single digit in a street address could cause a service address to appear to be

records match a business address in the Dun & Bradstreet and/or Austin-Tetra databases. And, finally, for DS0 loops, 89% of the service addresses had an exact match in the Dun & Bradstreet and/or Austin-Tetra databases and another 7.9% were within 1/20th of a mile, providing strong evidence that 96.9% of its DS0 loops are being provided to business locations.²²

These results should not be surprising, especially for DS1 and DS3 loops. As noted by AT&T, there simply is not a business case for using these UNEs to serve residential customers.²³ CenturyLink's average unit price for a DS1 UNE loop is \$68.59 per month. Few residential customers today would be willing to pay that amount plus the CLEC's markup for a 1.5 Mbps broadband service. CenturyLink's average unit price for a DS3 UNE loop is much higher (\$719.30), confirming that a CLEC would never use this UNE to serve a residential customer.

Third, those claiming that UNEs and Section 251(c)(4) resale are essential to competition ignore the fact that forbearance from those requirements would have no impact on their ability to purchase access to ILEC last-mile services. CenturyLink commits to provide each type of UNE, including DS0 loops, on a commercial basis if the Commission forbears from the requirement to provide that UNE, to the extent the copper facilities and other components necessary to provide that UNE remain in service. In making this commitment, it is worth noting that CenturyLink's financial interest is to retain wholesale customers on its increasingly underutilized copper network, rather than losing them to wholesale competitors.

thousands of feet away from its actual location. And, for other locations, a business may use more than one business address or simply may not be listed in either database.

²² Another 1% of the service addresses for CenturyLink's UNE DS0 loops were within a half mile of a Dun & Bradstreet and/or Austin-Tetra business address.

²³ AT&T Comments at 3-4.

Thus, competition and consumer welfare by no means depend on the continuing availability of UNE loops and Section 251(c)(4). These requirements have long outlived any utility they once had, and therefore the public interest strongly supports their elimination.

III. THE RECORD ALSO SUPPORTS NATIONWIDE RELIEF FOR PRICE CAP CARRIERS' TDM TRANSPORT, WHETHER PROVIDED AS BDS OR UNES.

As the Commission found in the *Second Further Notice*, the record in the BDS proceeding contains “‘strong evidence of substantial competition’ in price cap TDM transport markets[,]”²⁴ including the *BDS Order* findings that, as of 2013, 92.1 percent of buildings with BDS demand in price cap territories were located within a half mile of competitive fiber transport facilities *and* 89.6% of all price cap census blocks with BDS demand had at least one served building within a half mile of competitive fiber.²⁵ As they did prior to the *BDS Order*, the CLECs seek to dismiss the significance of these statistics, claiming that the presence of competitive fiber in a census block is irrelevant to the question whether interoffice transport is competitive “since it does not inform the Commission about the distances between the [competitive] fiber and ILEC end offices.”²⁶

As CenturyLink has previously noted, these arguments mischaracterize the way in which providers deploy networks. If competitive fiber extends to within a half mile of a customer

²⁴ *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers; Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers*, WC Docket Nos. 17-144, 16-143, 05-25, Report and Order, Second Further Notice of Propose Rulemaking and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10455 ¶ 151 (2018) (*Second Further Notice*), citing *BDS Order*, 32 FCC Rcd at 3496 ¶ 79, 3501 ¶ 91.

²⁵ *Second Further Notice*, 33 FCC Rcd at 10454 ¶ 149.

²⁶ Comments of Incompas, WC Docket Nos. 16-143, 05-25, at 5; & *see also* 4-13 (filed Feb. 8, 2019).

location with BDS demand, and therefore can be profitably extended to fulfill that demand,²⁷ there is no need to connect to the ILEC's end office to serve that customer. Instead, the competitor can bypass the ILEC's network altogether.²⁸ In any case, the April Data Tables demonstrate that, even by 2013, the vast majority of ILEC wire centers were within a half mile of competitive fiber and/or buildings with a competitive connection, and the majority were even closer to competition.²⁹

Rather than welcoming this information about competitive proximity, the CLECs now misguidedly attempt to discredit it, asserting that the absence of information on competitors' splice points and inclusion of cable companies' fiber facilities somehow overstate the potential for competitive entry.³⁰ As CenturyLink and others have previously shown, the CLECs' concerns about splice points are overblown. Basic engineering principles and sound business decisionmaking lead providers to deploy splice points in a manner that allows them to use their fiber investments to serve nearby locations with BDS demand, because "[f]ailure to do so would produce a network to nowhere, and would be a colossal economic and engineering blunder."³¹ Given that ILEC wire centers serve as long-established aggregation points for BDS demand, and frequently are located in central business districts, it would be odd, to say the least, for CLECs to omit splice points from their fiber running near those wire centers.

²⁷ *BDS Order*, 32 FCC Rcd at 3482 ¶ 45.

²⁸ *Id.*, 32 FCC Rcd at 3497 ¶ 81 n.273.

²⁹ Declaration of Glenn Woroch and Robert Calzaretta in Support of USTelecom Petition for Forbearance at 2 (Woroch/Calzaretta Declaration), attached to USTelecom May 6, 2019 Ex Parte.

³⁰ *See INCOMPAS Comments* at 8.

³¹ Letter from Christopher T. Shenk, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, at 2, 3 (Sep. 23, 2016).

When deploying fiber optic facilities, CenturyLink installs spare splice points to serve anticipated future demand.³² This is true whether CenturyLink is providing service as an in-region incumbent or as a CLEC deploying a fiber optic ring outside CenturyLink’s incumbent footprint. CenturyLink also minimizes the cost of adding *new* splice points by incorporating fiber “slack” in its network, which also expedites the installation of splice points and generally avoids the need to disrupt service to customers already served on that fiber cable.³³ Given the ease of doing so, CenturyLink routinely adds splice points to its metro fiber networks, multiple times a day, to provision services, add new customers, and perform repairs. Establishing a splice point generally does not significantly increase the cost of adding a new customer location to CenturyLink’s network.³⁴ The use of spare splice points is an industry best practice, utilized not only by CenturyLink but by virtually all providers that deploy fiber optic networks.

The CLECs’ claim that cable companies ignore potential demand to provide links to ILEC central offices is equally suspect. In the *BDS Order*, the Commission found that wholesale customers, such as AT&T and Sprint, were increasingly leaning on cable networks for use in their business data services and backhaul services.³⁵ Cable’s rapid and continuing deployment of fiber only hastens these trends,³⁶ resulting in a projected growth of 6.3% additional market share for cable

³² Letter from Melissa E. Newman, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, at 2 (Oct. 5, 2016).

³³ *Id.*, Declaration of AnnMarie Cederberg ¶ 4.

³⁴ *Id.* ¶ 5.

³⁵ *BDS Order*, 32 FCC Rcd at 3473 ¶ 28.

³⁶ See David N. Watson, CEO, Comcast Cable, *Comcast Corp. at Deutsche Bank Media and Telecom Conference*, Thomson Reuters StreetEvents, Edited Transcript, at 4 (Mar. 12, 2019), <https://www.cmcsa.com/static-files/8095c551-1327-4115-ac21-c16f473e1d2a> (“[W]e’ve been continuously going fiber, building fiber out into the marketplace.”).

business transport services from 2017 to 2023.³⁷ And cable companies such as Cox and Spectrum actively market to wholesale customers.³⁸

These facts gathered in the context of the BDS proceeding apply with equal force to USTelecom's request for forbearance nationwide from unbundling requirements for DS1 and DS3 transport, as these UNEs are functionally indistinguishable from their BDS counterparts.³⁹

IV. THERE IS NO MERIT TO THE CLECS' PROCEDURAL OBJECTIONS.

The Commission should also reject the CLECs' overwrought procedural objections. INCOMPAS and Sprint greatly exaggerate the impact of the Commission's introduction of the April Data Tables into the record in the USTelecom forbearance petition proceeding three and a half months before the August 2 deadline, which hardly constitutes an "avalanche of new information" or "massive amount of data at effectively the eleventh hour[.]"⁴⁰ Given that neither the Commission nor any party in the USTelecom proceeding has so far relied on any other highly confidential information collected in the BDS proceeding, there is no need for parties to dig through the BDS data enclave. As it has since it filed the forbearance petition, USTelecom is instead relying on the publicly available, highly relevant findings in the *BDS Order* itself,

³⁷ *Atlantic-ACM Wireline and Wireless Forecast* at 60.

³⁸ Cox Business website, *Solutions for Wholesalers and Resellers*, <https://www.cox.com/business/industry-expertise/wholesale-var.html> (last visited May 27, 2019); Spectrum Enterprise website, *Solutions for Carriers*, <https://enterprise.spectrum.com/solutions/carrier-services.html> (last visited May 27, 2019). Such providers can carry BDS transport traffic from ILEC wire centers without collocating in those wire centers, with their wholesale customers purchasing entrance facilities from the ILEC or a competitor to exit that wire center.

³⁹ CenturyLink Comments at 2; Verizon Comments at 5.

⁴⁰ INCOMPAS Comments at 4, 15; *see also* Comments of Sprint, WC Docket Nos. 16-143, 05-25, 17-144, at 4 (filed May 9, 2019).

demonstrating that the BDS counterparts to unbundled DS1 and DS3 loops and transport are subject to intense competition.⁴¹

V. CONCLUSION

For all these reasons, the Commission should adopt its proposal in the BDS proceeding to continue to exempt price cap carriers' TDM transport services from ex ante pricing regulation on a nationwide basis. Similarly, the Commission should grant USTelecom's request to forbear from price cap carriers' unbundling obligations nationwide, and, in any case, must forbear from DS1 and DS3 unbundling any area in which it has eliminated ex ante pricing regulation for the corresponding business data services.

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⁴¹ USTelecom has already rebutted the CLECs' arguments that its petition was not "complete as filed" or that the Commission somehow lacks authority to grant the petition in part, despite clear language to the contrary in Section 10. *See* USTelecom May 6, 2019 Ex Parte at 14-20.